



General Assembly

Substitute Bill No. 5641

February Session, 2008

* HB05641GAE 041508 *

AN ACT CONCERNING CONSERVATION DEVELOPMENT.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective July 1, 2008*) As used in sections 2 to 4,
2 inclusive, of this act:

3 (1) "Conservation development" means a residential development
4 that concentrates buildings and structures in specific areas of a lot, site
5 or parcel so that the remaining land can used for recreation, open
6 space or preservation of features or structures with environmental,
7 historical, cultural or other significance;

8 (2) "Conservation development zone" means a zone adopted by a
9 zoning commission pursuant to sections 2 to 4, inclusive, of this act;

10 (3) "Open space" means land or a permanent interest in land that is
11 used for or satisfies one or more of the criteria listed in subsection (b)
12 of section 7-131d of the general statutes; and

13 (4) "Zoning commission" means a municipal agency designated or
14 authorized to exercise zoning powers under chapter 124 of the general
15 statutes or a special act, and includes an agency that exercises both
16 planning and zoning authority.

17 Sec. 2. (NEW) (*Effective October 1, 2008*) (a) Notwithstanding the
18 provisions of any charter or special act, a zoning commission may

19 adopt, as part of the zoning regulations adopted under section 8-2 of
20 the general statutes or any special act, regulations establishing a
21 conservation development zone in accordance with the provisions of
22 this section and sections 3 and 4 of this act.

23 (b) A conservation development zone shall be an overlay zone and
24 shall satisfy the following requirements:

25 (1) A conservation development for which an application has been
26 filed pursuant to the provisions of subsection (g) of section 8-3 of the
27 2008 supplement to the general statutes shall be an as of right
28 permitted use in such zone and shall not be subject to any special
29 permit, special exception, special exemption or other similar
30 discretionary procedures, requirements or standards under the
31 provisions of chapter 124 of the general statutes;

32 (2) The number of housing units per acre in the conservation
33 development zone shall constitute an increase over the housing
34 density of the underlying zone of (A) at least ten per cent if the amount
35 of land set aside as open space is more than twenty per cent of the
36 development area; (B) at least fifteen per cent if the amount of land set
37 aside is more than twenty-five per cent of the development area; (C) at
38 least twenty per cent if the amount of land set aside as open space is
39 more than thirty per cent or (D) at least thirty per cent if the amount of
40 land set aside as open space is more than forty per cent. The density
41 provided for in this subdivision shall be increased by two per cent if
42 the open space to be set aside is adjacent to other open space or to a
43 public highway;

44 (3) Notwithstanding any minimum lot or building requirements in
45 the municipality, the size of lots shall be based on soil characteristics,
46 except as otherwise provided for in this subdivision. If a lot is served
47 by a public water or sewer system or served by an alternative on-site
48 sewage treatment system, the regulations may authorize the
49 commission to waive the requirements of the zoning regulations,
50 including, but not limited to, requirements for lot size setbacks, lot

51 coverage, building height and road frontage. If a lot is not served by a
52 public water or sewer system or served by an alternative on-site
53 sewage treatment system, such regulations shall contain provisions for
54 lot size, setbacks, lot coverage, building height and road frontage that
55 are necessary to protect the health and safety of the municipality;

56 (4) Open space in a conservation development shall restore,
57 preserve or enhance wildlife habitation or use of the property;

58 (5) The amount of open space the commission may require in a
59 conservation development shall be at least twenty per cent, but not
60 more than fifty per cent, of the land that can be improved excluding:
61 (A) Land already committed to a public use or purpose, whether
62 publicly or privately owned; (B) existing parks, recreation areas and
63 open space that is dedicated to the public or subject to a recorded
64 conservation easement; (C) land otherwise subject to an enforceable
65 restriction on or prohibition of development; (D) wetlands or
66 watercourses as defined in chapter 440 of the general statutes; and (E)
67 land with vertical slopes in excess of forty degrees; and

68 (6) The developer shall enter into an agreement with a municipality
69 or a nonprofit land holding conservation organization for the
70 maintenance of the open space. The agreement may require
71 contributions by the developer for maintenance and shall be binding
72 on all successors and assigns.

73 Sec. 3. (NEW) (*Effective July 1, 2008*) (a) A zoning commission, at the
74 time of and as part of its adoption of regulations for a conservation
75 development zone, may adopt design standards for a conservation
76 development within such zone.

77 (b) Such design standards may (1) ensure that construction within
78 the conservation development zone is complementary to adjacent and
79 neighboring buildings and structures and (2) address the scale and
80 proportions of buildings; site coverage; alignment, width and grade of
81 streets and sidewalks; type and location of infrastructure; location of
82 building and garage entrances; off-street parking; protection of

83 significant natural site features; location and design of open spaces;
84 signage; and setbacks and buffering from adjacent properties.

85 Sec. 4. (NEW) (*Effective July 1, 2008*) (a) A zoning commission shall
86 prescribe, consistent with the provisions of this section and sections 1
87 and 2 of this act, the form of an application for approval of a
88 conservation development. Receipt and processing of applications
89 shall follow the time periods and procedures of chapter 124 or 126 of
90 the general statutes, as applicable. A zoning commission, or its agent,
91 is authorized, to the extent allowed by the Freedom of Information
92 Act, to conduct one or more preliminary or preapplication planning or
93 workshop meetings with regard to a conservation development zone
94 or development.

95 (b) The regulations in a conservation development zone may require
96 the applicant for approval of a conservation development to pay the
97 cost of reasonable consulting fees to provide peer review of the
98 technical aspects of the application for the benefit of the commission.
99 Such fees shall be held in a separate account and used only for
100 expenses associated with the technical review of the application by
101 consultants who are not otherwise salaried employees of the
102 municipality or the commission, and any surplus remaining, including
103 any interest accrued, shall be returned to the applicant within forty-
104 five days of the completion of such technical review.

105 (c) Conservation development zone regulations may provide for the
106 referral of a site plan or subdivision application for comment to other
107 agencies, boards or commissions of the municipality. If a site plan or
108 subdivision application is referred to another agency, board or
109 commission, such agency, board or commission may provide any
110 comments to the zoning, within the applicable time period for such
111 commission to make a decision on the application.

112 (d) A conservation development shall be approved by the zoning
113 commission subject only to conditions that are necessary to (1) ensure
114 substantial compliance of the proposed development with the

115 requirements of the conservation development zone regulations,
116 design standards, if any, and, if applicable, subdivision regulations,
117 pursuant to section 8-25 of the 2008 supplement to the general statutes,
118 as amended by this act; or (2) ensure compliance with the provisions of
119 any state law or regulations adopted thereunder or local ordinance
120 concerning land use. An application may be denied only on the
121 grounds that: (A) The development does not meet the requirements set
122 forth in the conservation development zone regulations; (B) the
123 applicant failed to submit information and fees required by the
124 regulations and necessary for an adequate and timely review of the
125 design of the development or potential development impacts; or (C)
126 there is no grantee for an easement or conveyance of the open space.

127 (e) The duration and renewal of an approval of a conservation
128 development shall be governed by subsection (i) or (j) of section 8-3 of
129 the 2008 supplement to the general statutes, section 8-26c or section 8-
130 26g of the general statutes, as applicable.

131 Sec. 5. Section 8-25 of the 2008 supplement to the general statutes is
132 amended by adding subsection (d) as follows (*Effective July 1, 2008*):

133 (NEW) (d) Notwithstanding the provisions of a charter or special
134 act, a commission shall amend the subdivision regulations adopted
135 under subsection (a) of this section to provide for conservation
136 development consistent with zoning regulations adopted in the
137 municipality under sections 1 to 4, inclusive, of this act. Such
138 subdivision regulations may require the applicant for approval of a
139 conservation development to pay the cost of reasonable consulting fees
140 to provide peer review of the technical aspects of the application for
141 the benefit of the commission.

142 Sec. 6. Section 8-26 of the 2008 supplement to the general statutes is
143 repealed and the following is substituted in lieu thereof (*Effective July*
144 *1, 2008*):

145 (a) All plans for subdivisions and resubdivisions, including
146 subdivisions and resubdivisions in existence but which were not

147 submitted to the commission for required approval, whether or not
148 shown on an existing map or plan or whether or not conveyances have
149 been made of any of the property included in such subdivisions or
150 resubdivisions, shall be submitted to the commission with an
151 application in the form to be prescribed by it. The commission shall
152 have the authority to determine whether the existing division of any
153 land constitutes a subdivision or resubdivision under the provisions of
154 this chapter, provided nothing in this section shall be deemed to
155 authorize the commission to approve any such subdivision or
156 resubdivision which conflicts with applicable zoning regulations. Such
157 regulations may contain provisions whereby the commission may
158 waive certain requirements under the regulations by a three-quarters
159 vote of all the members of the commission in cases where conditions
160 exist which affect the subject land and are not generally applicable to
161 other land in the area, provided that the regulations shall specify the
162 conditions under which a waiver may be considered and shall provide
163 that no waiver shall be granted that would have a significant adverse
164 effect on adjacent property or on public health and safety. The
165 commission shall state upon its records the reasons for which a waiver
166 is granted in each case. The commission may establish a schedule of
167 fees and charge such fees. The amount of the fees shall be sufficient to
168 cover the costs of processing subdivision applications, including, but
169 not limited to, the cost of registered or certified mailings and the
170 publication of notices, and the costs of inspecting subdivision
171 improvements. Any schedule of fees established under this section
172 shall be superseded by fees established by ordinance under section 8-
173 1c. The commission may hold a public hearing regarding any
174 subdivision proposal if, in its judgment, the specific circumstances
175 require such action. No plan of resubdivision shall be acted upon by
176 the commission without a public hearing. Such public hearing shall be
177 held in accordance with the provisions of section 8-7d of the 2008
178 supplement to the general statutes. The commission shall approve,
179 modify and approve, or disapprove any subdivision or resubdivision
180 application or maps and plans submitted therewith, including existing
181 subdivisions or resubdivisions made in violation of this section, within

182 the period of time permitted under section 8-26d. Notice of the
183 decision of the commission shall be published in a newspaper having a
184 substantial circulation in the municipality and addressed by certified
185 mail to any person applying to the commission under this section, by
186 its secretary or clerk, under his signature in any written, printed,
187 typewritten or stamped form, within fifteen days after such decision
188 has been rendered. In any case in which such notice is not published
189 within such fifteen-day period, the person who made such application
190 may provide for the publication of such notice within ten days
191 thereafter. Such notice shall be a simple statement that such
192 application was approved, modified and approved or disapproved,
193 together with the date of such action. The failure of the commission to
194 act thereon shall be considered as an approval, and a certificate to that
195 effect shall be issued by the commission on demand. The grounds for
196 its action shall be stated in the records of the commission. No planning
197 commission shall be required to consider an application for approval
198 of a subdivision plan while another application for subdivision of the
199 same or substantially the same parcel is pending before the
200 commission. For the purposes of this section, an application is not
201 "pending before the commission" if the commission has rendered a
202 decision with respect to such application and such decision has been
203 appealed to the Superior Court. If an application involves land
204 regulated as an inland wetland or watercourse under the provisions of
205 chapter 440, the applicant shall submit an application to the agency
206 responsible for administration of the inland wetlands regulations no
207 later than the day the application is filed for the subdivision or
208 resubdivision. The commission shall, within the period of time
209 established in section 8-7d of the 2008 supplement to the general
210 statutes, accept the filing of and shall process, pursuant to section 8-7d
211 of the 2008 supplement to the general statutes, any subdivision or
212 resubdivision involving land regulated as an inland wetland or
213 watercourse under chapter 440. The commission shall not render a
214 decision until the inland wetlands agency has submitted a report with
215 its final decision to such commission. In making its decision the
216 commission shall consider the report of the inland wetlands agency

217 and if the commission establishes terms and conditions for approval
218 that are not consistent with the final decision of the inland wetlands
219 agency, the commission shall state on the record the reason for such
220 terms and conditions. In making a decision on an application, the
221 commission shall consider information submitted by the applicant
222 under subsection (b) of section 8-25 of the 2008 supplement to the
223 general statutes, as amended by this act, concerning passive solar
224 energy techniques. The provisions of this section shall apply to any
225 municipality which exercises planning power pursuant to any special
226 act.

227 (b) After the adoption of subdivision regulations under subsection
228 (d) of section 8-25 of the 2008 supplement to the general statutes, as
229 amended by this act, a conservation development for which an
230 application has been filed pursuant to this section , shall be an as of
231 right permitted use and shall not be subject to any discretionary
232 procedures, requirements or standards under the provisions of this
233 chapter. The commission shall approve a conservation development
234 subject only to conditions that are necessary to ensure (1) substantial
235 compliance of the proposed development with the requirements of
236 such regulations; or (2) compliance with the provisions of any state law
237 or regulations adopted thereunder or any local ordinance in the
238 municipality concerning land use. An application may be denied only
239 on the grounds that: (A) The development does not meet the
240 requirements set forth in the conservation development regulations;
241 (B) the applicant failed to submit information and fees required by the
242 regulations and necessary for an adequate and timely review of the
243 design of the development or potential development impacts; or (C)
244 there is no grantee for an easement or conveyance of the open space.

245 Sec. 7. Section 16a-32 of the general statutes is repealed and the
246 following is substituted in lieu thereof (*Effective July 1, 2008*):

247 (a) Each revision of the plan of conservation and development shall
248 be initiated by the secretary and shall be undertaken in accordance
249 with the process outlined in this chapter.

250 (b) Without initiating a revision of the plan and after receiving
251 written approval from the committee, the secretary may undertake
252 interim changes in the plan upon the secretary's own initiative or upon
253 application by (1) the chief executive officer of a municipality, with the
254 approval of the legislative body of such municipality, or (2) any owner
255 of real property or any interest therein on which a change is proposed.
256 No application for an interim change from a municipality under
257 subdivision (1) of this subsection may be submitted unless (A) the
258 municipality in which the change is proposed has a plan of
259 conservation and development that has been updated in accordance
260 with section 8-23 of the 2008 supplement to the general statutes, and
261 (B) the application includes evidence, in writing, of the opinion of the
262 planning commission of the municipality regarding the interim
263 change. The secretary shall adopt regulations in accordance with
264 chapter 54 to establish procedures for applications for such interim
265 changes by any person, political subdivision of the state or state
266 agency. Such regulations shall include, but need not be limited to,
267 provisions for interviews and consultations with local planning and
268 zoning commissions or, in those municipalities which have adopted
269 the provisions of chapter 124 but which do not have a zoning
270 commission, the persons designated to exercise zoning powers
271 pursuant to section 8-1, review of local plans of development and
272 public hearings. The secretary shall notify the chief executive officer
273 and the persons exercising planning or zoning powers in any
274 municipality which is the subject of an application for change in the
275 locational guide map and shall notify any members of the General
276 Assembly representing any area which is the subject of such an
277 application. A joint public hearing by the secretary and the committee
278 shall be held in any such municipality if requested by any chief
279 executive officer or planning or zoning official notified by the secretary
280 pursuant to this subsection. The committee shall also hold a hearing in
281 addition to any hearing required to be held in any municipality
282 concerning the locational guide map on any other proposed changes.
283 After such public hearing, the committee shall approve or disapprove
284 the application and notify the secretary of its decision not more than

285 ten days thereafter. In the case of an application to change the
286 development priority classification of an area on the locational guide
287 map from rural lands to rural community centers and if the area
288 described in the application includes a conservation development, as
289 defined in section 1 of this act, there shall be a rebuttable presumption
290 that such change is in the best interest of the state. The secretary shall
291 make interim changes in the plan to reflect the approved changes.

292 (c) The secretary shall report annually on or before February
293 fifteenth to the committee progress on the implementation of the plan
294 and the extent to which state actions are in conformity with the plan.

295 (d) Nothing in this section shall be construed to prohibit the
296 committee from initiating a revision of the plan at any time.

297 Sec. 8. Section 8-18 of the general statutes is repealed and the
298 following is substituted in lieu thereof (*Effective October 1, 2008*):

299 As used in this chapter: "Commission" means a planning
300 commission; "municipality" includes a city, town or borough or a
301 district establishing a planning commission under section 7-326;
302 "subdivision" means the division of a tract or parcel of land into three
303 or more parts or lots made subsequent to the adoption of subdivision
304 regulations by the commission, for the purpose, whether immediate or
305 future, of sale or building development expressly excluding
306 development for municipal, conservation or agricultural purposes, and
307 includes resubdivision; "resubdivision" means a change in a map of an
308 approved or recorded subdivision or resubdivision if such change (a)
309 affects any street layout shown on such map, (b) affects any area
310 reserved thereon for public use or (c) diminishes the size of any lot
311 shown thereon and creates an additional building lot, if any of the lots
312 shown thereon have been conveyed after the approval or recording of
313 such map; "cluster development" means a building pattern
314 concentrating units on a particular portion of a parcel so that at least
315 [one-third] twenty to fifty per cent of the parcel remains as open space
316 to be used exclusively for recreational, conservation and agricultural

317 purposes [except that nothing herein shall prevent any municipality
 318 from requiring more than one-third open space in any particular
 319 cluster development] and includes a conservation development
 320 approved under sections 1 to 4, inclusive, of this act and sections 8-25
 321 and 8-26 of the 2008 supplement to the general statutes, as amended by
 322 this act; "town" and "selectmen" include district and officers of such
 323 district, respectively.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2008</i>	New section
Sec. 2	<i>October 1, 2008</i>	New section
Sec. 3	<i>July 1, 2008</i>	New section
Sec. 4	<i>July 1, 2008</i>	New section
Sec. 5	<i>July 1, 2008</i>	8-25
Sec. 6	<i>July 1, 2008</i>	8-26
Sec. 7	<i>July 1, 2008</i>	16a-32
Sec. 8	<i>October 1, 2008</i>	8-18

PD *Joint Favorable Subst.*

GAE *Joint Favorable*